IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3886 OF 1999

Mrs. Vida Marie Suares & Anr .. Plaintiffs

Versus

Keki Phiroze Balsara since

deceased through heirs. .. Defendants

Mr.Madhav Jamdar for plaintiffs

Mr.Bhalchandra Palav i/b Pardiwala & Co. for defendants

CORAM : P.V.KAKADE, J.

DATE : 31ST AUGUST, 2004.

P.C.:

1. The plaintiffs have filed this suit against the defendants for recovery of the amount of Rs.1,10,076/= along with interest thereon at the rate of 18% p.a. from the date of the suit till actual payment or realisation.

2. The plaintiffs are the flat purchasers and the the

original defendant is the promoter and developer of the suit flat. The cause of action of the suit was arosed when the defendants did not pay the requisite amounts towards the Stamp Duty and interest on that amount, Registration charges and interest thereon, Miscellaneous Expenses with interest thereon. Total came to Rs.1,10,076/=, this amount actually payable by the defendants but it was not paid and therefore, the plaintiffs were required to pay the amount and they have paid the said amounts on 9.7.1996 and 25.9.1996 respectively. Hence the suit for recovery of the said amount.

3. The defendants did not appear and therefore, the suit proceeded ex-parte against them. Written Statement was also not filed and therefore, the suit was listed for ex-parte decree. The Plaintiffs have filed their affidavit of evidence along with compilation of documents including the agreement for development and flat agreement between the parties along with relevant correspondence, which is evident sufficient to hold that the plaintiffs have proved their claim especially when the entire evidence on record had gone unchallenged. It is also seen from the record that the suit is within

limitation as it is lodged within three years from the date of first payment made by the plaintiffs.

4. In view of this position there is no doubt that the plaintiffs' claim is proved and hence they are entitled to decree as prayed for by virtue of Order 8 Rule 5(2) of the Civil Procedure Code. Hence the Order.

. The suit stands decreed with costs.

The Defendants shall pay the amount of Rs.1,10,076/= to the plaintiffs along with interest at the rate of 12% p.a. to the aforesaid amount from the date of the suit till actual payment or realisation.

*****